

**SS-8 Determination—Determination for Public Inspection**

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| Occupation<br>09DVC.87 Driver | Determination:<br><input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor  |
| UILC                          | Third Party Communication:<br><input checked="" type="checkbox"/> None <input type="checkbox"/> Yes |

**Facts of Case**

The firm is a 501(c)(3) business offering day-care and other services for at risk youths. The firm engaged the worker through an application process to drive the firm's van and transport children between school and the center during the school year and as needed on a variable schedule during summer on field trips. The firm assigns the worker a designated route to make pickups during the school year and a verbal agreement was entered into concerning the salary payment for these services. The worker is paid an hourly wage for driving the van on field trips during the summer. The firm issues the worker a Form 1099-MISC for the salary payments and Form W-2 for the hourly payments.

The firm provided no training but required the worker to be certified in CPR and first aid. The firm instructs the worker on assigned route specifications and both parties determine the methods used to perform the services. The worker is required to contact the firm regarding any problems or complaints for resolution. The worker picks up the van at the firm's premises and returns the van upon completion of the route. The worker performs the services personally. The firm hires and pays substitutes or helpers as needed.

The firm provides the van and pays all maintenance and gas expenses. The worker does not lease equipment or space. The worker does not incur any business expenses. The firm pays the worker a salary on a biweekly basis during the school year and hourly wage during the summer. The firm is paid through the firm's customers resources. The firm determines the level of payment for the services. The firm does not carry workers' compensation insurance. The worker can not suffer any economic loss and has no financial risk.

The worker does not perform similar services for others or advertise to the public as being engaged in a business. The firm and worker retain the right to terminate the working relationship at any time without incurring any liability.

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**Analysis**

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case you engaged the worker through an application process to drive your van on your designated established routes during the school year and on field trips during the summer. You and the worker determine the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. You require the worker to contact you regarding any problems or complaints for resolution. You hire and pay substitutes or helpers if needed. These facts evidence behavioral control by you over the services being performed by the worker.

You provide the van and pay all maintenance and fuel expenses. The worker does not lease anything or incur any business expenses. You pay the worker a biweekly salary during the school year and hourly wage during the summer. You are paid through your customers resources. You determine the level of payment for the services. The worker can not suffer any economic loss and has no financial risk with regard to the services being performed for your business operation. These facts evidence financial control by you over the services being performed by the worker.

You indicated there is verbal working relationship agreement between you and the worker for the salary payment. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker does not perform similar services for others or advertise to the public as being engaged in a business. The worker has been performing services for your business on a regular and continuous basis over several years under your business name.

Both you and the worker retain the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Many religious, charitable, educational, or other nonprofit organizations are exempt from federal income tax. However, they must withhold federal income tax from their employees' pay and report each employee's compensation on Form W-2. If an employee is paid \$100 or more during a calendar year, his/her wages are also subject to FICA taxes (social security and Medicare).

Payments for services performed by an employee of a nonprofit organization described in section 501(c)(3) are not subject to FUTA taxes.